IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2111 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT CHIMANLAL MODI

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2000

ORAL JUDGEMENT

#. The petitioner - Bharatkumar Chimanlal Modi, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Surat City, Surat, in exercise of powers under Section 3(1) of the PASA Act, dated December 20, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner under the Bombay Prohibition Act. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on November 14, 1999 and November 23, 1999 and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. It is contended by learned advocate for the petitioner that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on November 27, 1999 and December 1, 1999, which were verified by the detaining authority on December 20, 1999 and the order of detention is passed on December 20, 1999. Learned counsel submitted, therefore, that after the recording of the statements of anonymous witnesses, the verification is made after a moth, and therefore, the privilege claimed by the detaining authority under Section 9(2) of the Act is not properly exercised. There is delay in verification of the statements. The petition may, therefore, be allowed.

#. The second contention taken is that consideration of possibility of resorting to the provisions under Section 57 of the Bombay Police Act. In absence of any conviction, order is passed which reflects non application of mind and would vitiate the order of detention.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. It may be noted that the detaining authority, while considering the less drastic remedies has considered the possibility of resorting to proceedings under section 57 of the Bombay Police Act. It is clear from the grounds of detention that only one case is registered against the detenue which was pending investigation. There is no allegation of any previous conviction, and therefore, there was no scope for taking into consideration the

possibility of resorting to proceedings under section 57 of the Bombay Police Act. Considering all these provisions indicates consideration of irrelevant and extraneous material by the detaining authority and non-application of mind. This would vitiate the order of detention. In this regard, the decision in the case of Bhupatbhai Ramjibhai Vasava v. District Magistrate, Bharuch & others reported in 1992 (2) GLH 350, may be considered.

#. In view of the aforesaid discussion, the petition deserves to be allowed. The impugned order of detention dated December 20, 1999 is hereby quashed and set aside. The detenue Bharatkuamr Chimanlal Modi, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

*****

pirzada/-